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employee's presence in the plaintiff's home in the instant case was in the exercise of a privilege necessarily extended to him as an employee of a telephone company. The employee's action was clearly an abuse of this privilege.

It would seem, therefore, that the defendant company should be liable since the commission of the tort constituted a breach of a special duty owed to the plaintiff by the company. If this reasoning is followed members of the public will be given protection from such incidents when taking advantage of the conveniences which public utilities were created to provide and in which its patrons have a right to share.

ROLAND C. BRASWELL.

Conflict of Laws—Divorce—Collateral Attack Barred by Laches

The jurisdiction of a state to grant a divorce is based upon the domicile of one or both of the parties within the state at the commencement of the action. Accordingly, a divorce decree rendered by a court without such jurisdiction is not entitled to full faith and credit in other states.¹ The finding of domicile by the divorce court is not conclusive and is subject to collateral attack in other states by a party not personally before the court when the decree was granted.²

In a recent case³ H obtained a Nevada divorce decree from W-1, a resident of the District of Columbia, who did not appear in the divorce action. H, subsequent to the decree, married W-2. In a proceeding before the Federal District Court in Florida, W-1 contended that the decree was void as H was never domiciled in Nevada. The court held that W-1, knowing of the divorce decree and delaying, without excuse, for nearly twenty years, was now guilty of laches and estopped from attacking its validity.

In theory the Nevada divorce decree was void and could not be vitalized by delay or non-action of the deserted spouse. Some cases have so held.⁴ Others have held that laches will attach by reason of

¹ *Williams v. North Carolina*, 325 U. S. 326, 229 (1944); *Crouch v. Crouch*, 28 Cal. 2d 243, 169 P. 2d 897, 900 (1946); *Coe v. Coe*, 136 Mass. 423, 55 N. E. 2d 702 (1944). For a complete list of cases see Note, 157 A. L. R. 1399 supplementing annotation in 143 A. L. R. 1294; GOODRICH, *CONFLICTS OF LAWS* §127 (3d ed. 1949).

² *Rice v. Rice*, 336 U. S. 674 (1949); *RESTATEMENT, CONFLICTS OF LAWS* §111, comment *a* (1934).

³ *Carpenter v. Carpenter*, 93 F. Supp. 225 (S. D. Fla. 1950) (The court also found that the evidence offered by W-1 was insufficient to rebut the presumption of H's domicile in Nevada.).

⁴ *McNutt v. McNutt*, 366 Cal. App. 652, 98 P. 2d 253 (1940); *Mills v. Mills*, 119 Conn. 612, 179 Atl. 5 (1935); *Field v. Field*, 215 Ill. 496, 74 N. E. 443 (1905); *Sammons v. Pike*, 108 Minn. 291, 122 N. W. 168 (1903); *Lawler v. Lawler*, 2 N. J. 527, 66 A. 2d 855 (Sup. Ct. 1949); *Baumann v. Baumann*, 250 N. Y. 382, 165 N. E. 819 (1929); *Melnick v. Melnick*, 147 Pa. Super. 564, 25 A. 2d 111 (1942); *Richmond v. Sangster*, 217 S. W. 723 (Tex. Civ. App. 1920).

delay that works disadvantage or injury to another.⁵ Under this latter view, the application of laches must depend upon the circumstances of each case.

In determining if laches should be applied, courts have considered numerous factors. Whether the defendant had knowledge the divorce was void has been given weight by some courts.⁶ Lapse of time causing prejudice due to the loss of material evidence by death of parties or witnesses has also been thought to be of significance.⁷ It has been held that remarriage of the divorce plaintiff has no effect on the application of laches.⁸ Yet, other cases have held that upon remarriage of the divorce plaintiff the rights of innocent third parties have intervened and may render it inequitable for the defendant to attack the validity of the divorce.⁹ But, where the second spouse of the divorce plaintiff encouraged the divorce or knew of the circumstances under which it was obtained, the second marriage of the plaintiff has not been given consideration in determining the applicability of laches.¹⁰ Affirmative acts of the defendant such as asserting the validity of the decree¹¹ or remarriage¹² will constitute acquiescence and bar collateral attack. However, delay in attacking the foreign decree may be justified on the ground that it was impossible to obtain personal service of process on the plaintiff within the state of the original domicile.¹³

Assuming that a non-appearing defendant in a foreign divorce action may be barred by laches due to an unreasonable delay in contesting the

⁵ *Bliss v. Bliss*, 50 F. 2d 1002 (D. C. Cir. 1931); *McNeil v. McNeil*, 170 Fed. 289 (9th Cir. 1909); *Pawley v. Pawley*, 46 So. 2d 464 (Fla. 1950); *Reed v. Reed*, 52 Mich. 117, 17 N. W. 720 (1883); *Sleeper v. Sleeper*, 129 N. J. Eq. 94, 18 A. 2d 1 (Ct. Err. & App. 1941); *Cope v. Cope*, 123 N. J. Eq. 190, 196 Atl. 422 (Ct. Err. & App. 1938); *Robinson v. Robinson*, 94 N. Y. S. 2d 806 (Sup. Ct. 1946); *Finan v. Finan*, 47 N. Y. S. 2d 429 (Sup. Ct. 1944); *McNeir v. McNeir*, 178 Va. 285, 16 S. E. 2d 632 (1941); *Dry v. Rice*, 147 Va. 331, 137 S. E. 473 (1927); *Wright Lumber Co. v. McCord*, 145 Wis. 93, 128 N. W. 873 (1910); see Note, 34 MINN. L. REV. 514 (1950).

⁶ *Field v. Field*, 215 Ill. 496, 74 N. E. 443 (1905); *Wright Lumber Co. v. McCord*, 145 Wis. 93, 128 N. W. 873 (1910).

⁷ *Reed v. Reed*, 52 Mich. 117, 17 N. W. 720 (1883); *Dry v. Rice*, 147 Va. 331, 137 S. E. 473 (1927).

⁸ *Bethune v. Bethune*, 192 Ark. 811, 94 S. W. 2d 1043 (1936); *Mills v. Mills*, 119 Conn. 612, 179 Atl. 5 (1935); *Baumann v. Baumann*, 250 N. Y. 382, 165 N. E. 819 (1929); *Sitterly v. Sitterly*, 186 Misc. 31, 58 N. Y. S. 2d 424 (Sup. Ct. 1945); *Melnick v. Melnick*, 147 Pa. Super. 564, 25 A. 2d 111 (1942); *Richmond v. Sangster*, 217 S. W. 723 (Tex. Civ. App. 1920).

⁹ *McNeil v. McNeil*, 170 Fed. 289 (9th Cir. 1909); *Sammons v. Pike*, 108 Minn. 291, 122 N. W. 168 (1903); *Sleeper v. Sleeper*, 129 N. J. Eq. 94, 18 A. 2d 1 (Ct. Err. & App. 1941); *Cope v. Cope*, 123 N. J. Eq. 190, 196 Atl. 422 (Err. & App. 1938); *McNeir v. McNeir*, 178 Va. 285, 16 S. E. 2d 632 (1941); *Dry v. Rice*, 147 Va. 331, 137 S. E. 473 (1927).

¹⁰ *Lawler v. Lawler*, 2 N. J. 527, 66 A. 2d 855 (Sup. Ct. 1949); *Pomerance v. Pomerance*, 187 Misc. 20, 61 N. Y. S. 2d 227 (Sup. Ct. 1946).

¹¹ *Marcus v. Marcus*, 194 Misc. 464, 90 N. Y. S. 2d 830 (Sup. Ct. 1949).

¹² RESTATEMENT, CONFLICTS OF LAWS §112 (1934).

¹³ *Melnick v. Melnick*, 147 Pa. Super. 564, 25 A. 2d 111 (1942).

validity of the divorce decree, what remedies are available to the defendant if sought within a reasonable time?

A court of equity may enjoin the prosecution of an action in another state by a citizen of its own state. Such an injunction is not a violation of the Full Faith and Credit Clause or the Privileges and Immunities Clause of the Federal Constitution; nor does it violate the comity relations that exist between the several states.¹⁴ In such cases the decree of the court is based on personal jurisdiction and directed to the party and not the tribunal where the suit or proceeding is pending. Where both parties are domiciled in the same state, the deserted party may obtain an injunction, restraining his spouse from further prosecuting divorce proceedings commenced by him in a court of another state.¹⁵ Injunction would seem proper in such a case to prevent evasion of the laws of the domicile, great expense and hardship in defending in another state, uncertainty of the marital status, and embarrassment of the deserted party. If the foreign divorce has not been commenced but merely threatened, there is conflicting authority whether an injunction will issue.¹⁶ In any event injunction will only lie where the deserting spouse has not established a bona fide domicile in the state in which the divorce is sought.¹⁷

The Full Faith and Credit Clause of the Federal Constitution does not prevent a collateral attack in one state on a divorce decree rendered in another state upon the ground that neither party was domiciled at the divorce forum.¹⁸ Such an attack may arise out of a separate action for divorce brought by the non-appearing defendant.¹⁹ Should the deserted spouse be the wife, the validity of the decree may be questioned

¹⁴ 28 AM. JUR. 389, INJUNCTION §204; Jacobs, *The Utility of Injunctions and Declaratory Judgments in Migratory Divorce*, 2 LAW & CONTEMP. PROB. 370, 374 (1935).

¹⁵ *Usen v. Usen*, 136 Me. 480, 13 A. 2d 738 (1940); *Ippolito v. Ippolito*, 3 N. J. 561, 71 A. 2d 196 (Sup. Ct. 1950); *Ward v. Ward*, 6 N. J. Super. 130, 70 A. 2d 502 (1950); *Gross v. Gross*, 13 N. J. Misc. 449, 180 Atl. 204 (Ch. 1935); *Knapp v. Knapp*, 12 N. J. Misc. 599, 173 Atl. 343 (Ch. 1934); *Barzilay v. Barzilay*, 75 N. Y. S. 2d 428 (Sup. Ct. 1947); *Pereira v. Pereira*, 272 App. Div. 281, 70 N. Y. S. 2d 763 (1st Dep't 1947); *Borda v. Borda*, 44 R. I. 337, 117 Atl. 362 (1922). *But cf.* *Gaskell v. Gaskell*, 189 Misc. 504, 72 N. Y. S. 2d 440 (Sup. Ct. 1947) (injunction against the prosecution of a divorce action in a foreign country was denied).

¹⁶ *Kahn v. Kahn*, 325 Ill. App. 137, 59 N. E. 2d 874 (1945) (injunction issued restraining the commencement of a foreign divorce); *Carr v. Carr*, 52 N. Y. S. 2d 386 (Sup. Ct. 1944) (injunction denied); *accord*, *DeRaay v. DeRaay*, 255 App. Div. 544, 8 N. Y. S. 2d 361 (1st Dep't 1938), *aff'd*, 280 N. Y. 822, 21 N. E. 2d 879 (1939).

¹⁷ *Smith v. Smith*, 364 Pa. 81, 70 A. 2d 630 (1950).

¹⁸ *Rice v. Rice*, 336 U. S. 674 (1949); BEALE, *THE CONFLICTS OF LAWS* §111.2 (1935).

¹⁹ *Crouch v. Crouch*, 28 Cal. 2d 243, 169 P. 2d 897 (1946); *Bobala v. Bobala*, 68 Ohio App. 63, 33 N. E. 2d 845 (1940); *Sitterly v. Sitterly*, 186 Misc. 31, 58 N. Y. S. 2d 424 (Sup. Ct. 1945).

in an action for support.²⁰ In both actions, if the foreign decree is pleaded as a defense, the court may inquire into the jurisdiction of the foreign court.²¹

The deserted spouse may also resort to the declaratory judgment, requesting the court to determine the marital status of the parties. If it is successfully proved that the plaintiff in the divorce action was not domiciled at the divorce forum the court will adjudge the foreign divorce decree null and void.²² That a declaratory judgment is an appropriate remedy seems well settled today.²³ In such a case there is an actual controversy as one spouse asserts that the foreign divorce is valid and the other contends that it is not.²⁴ Both have an interest in the marital status; and if the deserted spouse does not wish a divorce or support, there is no adequate remedy at law.²⁵ Thus, the action will settle the status and terminate the controversy.²⁶

These remedies seem to afford the non-appearing defendant in a foreign divorce suit adequate protection of his or her marital status and property rights. Reasonably prompt action would prevent the result of the principal case.

ROBERT M. WILEY.

Federal Courts—Civil Rights Act—Stay of State Criminal Proceedings

In 1793, Congress, apprehending the danger of encroachment by federal courts upon the jurisdiction of state courts, passed a statute prohibiting the enjoining of proceedings in state courts by courts of the United States.¹ This statute, with but one amendment,² remained

²⁰ *White v. White*, 150 F. 2d 157 (D. C. Cir. 1945); *Evans v. Evans*, 149 F. 2d 831 (D. C. Cir. 1945); *Atkins v. Atkins*, 386 Ill. 345, 54 N. E. 2d 488 (1945); *Phelps v. Phelps*, 154 Pa. Super. 270, 35 A. 2d 530 (1944).

²¹ Note, 157 A. L. R. 1399 (1945).

²² *Mills v. Mills*, 119 Conn. 612, 179 Atl. 5 (1935); *Hogan v. Hogan*, 320 Mass. 658, 70 N. E. 2d 821 (1947); *Lawler v. Lawler*, 2 N. J. 527, 66 A. 2d 855 (Sup. Ct. 1949); *Henry v. Henry*, 140 N. J. Eq. 21, 144 Atl. 18 (Ch. 1928); *Lowe v. Lowe*, 265 N. Y. 197, 192 N. E. 291 (1934); *Baumann v. Baumann*, 250 N. Y. 382, 165 N. E. 819 (1929); *Altholy v. Altholy*, 72 N. Y. S. 2d 143 (Sup. Ct. 1947); *Smerda v. Smerda*, 74 N. E. 2d 751 (Ohio 1947); *Melnick v. Melnick*, 147 Pa. Super. 564, 25 A. 2d 111 (1942); BORCHARD, *DECLARATORY JUDGMENTS* 478 (2d ed. 1941); see *Jacobs, The Utility of Injunctions and Declaratory Judgments in Migratory Divorce*, 2 LAW & CONTEMP. PROB. 370, 391 (1935).

²³ BORCHARD, *DECLARATORY JUDGMENTS* 479 (2d ed. 1941).

²⁴ *Melnick v. Melnick*, 147 Pa. Super. 564, 25 A. 2d 111 (1942).

²⁵ *Henry v. Henry*, 140 N. J. Eq. 21, 144 Atl. 18 (Ch. 1928); *Melnick v. Melnick*, 147 Pa. Super. 564, 25 A. 2d 111 (1942).

²⁶ *Hogan v. Hogan*, 320 Mass. 658, 70 N. E. 2d 821 (1947).

¹ " . . . nor shall a writ of injunction be granted to stay proceedings in any court of a state." Act of March 2, 1793, c. 22, §5, 1 STAT. 334 (1793), as amended, REV. STAT. §720 (1875), 28 U. S. C. §379 (1926), 62 STAT. 968, 28 U. S. C. §2283 (1948). This statute has been held not to be jurisdictional, but